



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/771,289	02/05/2004	Cyril Meziere	07552.0022	2868
22852	7590	11/14/2008		
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413				
EXAMINER				
DEAK, LESLIE R				
ART UNIT		PAPER NUMBER		
3761				
MAIL DATE		DELIVERY MODE		
11/14/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/771,289

**Applicant(s)**

MEZIERE ET AL.

**Examiner**

LESLIE R. DEAK

**Art Unit**

3761

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 August 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2-6, 8-13, 15-27, 29 and 37-49 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-6, 8-13, 15-22, 24-27, 37-42 and 49 is/are rejected.
- 7) ☒ Claim(s) 23, 29 and 43-48 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 29 August 2008 has been entered.

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 41, 2-6, 8-13, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,390,311 to Belokin in view of US 6,123,847 to Bene.

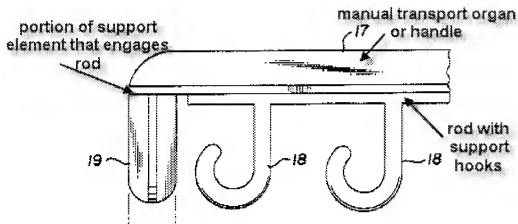
In the specification and figures, Belokin discloses the apparatus substantially as claimed by applicant. With regard to claims 41, 2-4, Belokin discloses a support device for liquid containers that is capable of being used with an extracorporeal blood machine, comprising a base body 12 and a support element 11/17, 12/17, wherein the support elements are slidable or rotatable around the base body, creating a horizontal displacement of part of the support elements with respect to the base body (see FIG 5,

column 3, line 47 to column 5, line 13). With regard to applicant's limitations drawn to a loading position and a work position, the Belokin device is capable of being operated as claimed in that the arms 17 may be swung outward of the support for easy access while loading the bags, and rotated inward of the support in a work position for compact location near the patient.

Belokin fails to disclose weighing sensors. Bene discloses a device and process for extracorporeal blood treatment comprising a structure for infusing liquids to a patient from a hanging bag 9 (see FIG 1). The solution bag or container comprises a hook that is attached to a balance 11 or weighing sensor (disposed above the container and means for hanging) that communicates with a controller 32 for controlling the fluid flow through the system (see columns 4-5). As such, it would have been obvious to one having ordinary skill in the art at the time of invention to add a weighing sensor that communicates with a controller such as that disclosed by Bene to the support apparatus disclosed by Belokin in order to control fluid flow through an extracorporeal blood treatment system, as taught by Bene.

With regard to claims 5 and 6, the support elements 11/17, 12/17 comprise arms that are slidable or movable within supports 21, meeting the limitations of the claims.

With regard to claims 8-13, 24, the support elements comprise a body or rod that carries a top section that may be used as a manual transport organ or handle to rotate the support elements or arms. The body or rod further comprises hooks 18 and is connected to the support element. See Belokin FIG2, as annotated by the Examiner, below.



3. Claims 15-18 and 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,390,311 to Belokin in view of US 6,123,847 to Bene, further in view of US 6,335,161 to Shah.

The cited prior art suggests the apparatus substantially as claimed by Applicant (see rejection above) with the exception of an end stop, controller, and position sensor. Shah discloses a dialysis system and an apparatus and method for loading bottles of solution into the system. The apparatus includes a support element 102 that holds solution container 20. The apparatus further comprises a motor 202 with an upper and lower limit sensor and assembly 208 that controls movement of the bottle from the loading position to the work position (see column 12, lines 1-50). While the limit sensor and position assembly do not comprise grooves as claimed by applicant, it is the position of the examiner that the Shah reference teaches that such upper and lower endrun stops are desirable in the art, and that it would have been obvious to one having ordinary skill in the art to try a reasonable number of well-known mechanical stop

mechanisms to provide the end stop claimed by applicant. Accordingly, applicant's claimed structure is not a patentable improvement over the prior art.

With regard to claims 19-20, Shah discloses that the apparatus may comprise a Hall position sensor in order to determine the position of the containers 20 within the system (see column 14, lines 35-42). Accordingly, it would have been obvious to one having ordinary skill in the art at the time of invention to add a position sensor as disclosed by Shah to the support apparatus disclosed by Belokin in order to determine the position of the elements within the system, as taught by Shah.

4. Claims 42 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,390,311 to Belokin in view of US 2002/0151804 to O'Mahony et al.

In the specification and figures, Belokin discloses the apparatus substantially as claimed by applicant. With regard to claim 42, Belokin discloses a support device for liquid containers that is capable of being used with an extracorporeal blood machine, comprising a base body 12 and a support element 11/17, 12/17, wherein the support elements are slidable or rotatable around the base body, creating a horizontal displacement of part of the support elements with respect to the base body (see FIG 5, column 3, line 47 to column 5, line 13). With regard to applicant's limitations drawn to a loading position and a work position, the Belokin device is capable of being operated as claimed in that the arms 17 may be swung outward of the support for easy access while loading the bags, and rotated inward of the support in a work position for compact location near the patient.

Belokin fails to disclose that the support device is connected to the lower zone of a machine. However, O'Mahoney discloses an extracorporeal blood treatment apparatus with a system console 128 and a container hanging means extending from the body of the machine console (see FIG 1, container 120). The apparatus comprises a weight sensor to determine the weight of the bag 120 in order to control operation of the extracorporeal procedure (see paragraph 0079). All of the claimed elements are known in the art, and one of ordinary skill in the art could have combined the disclosed elements by known methods, yielding only the predictable result of a support device with movable support elements disposed below the lower end of a blood treatment machine with weight sensors to control fluid flow. Accordingly, it would have been obvious to one having ordinary skill in the art at the time of invention to adjust the support means disclosed by Belokin to a height that would place the support element 17 and hooks or means for hanging below the machine.

5. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,390,311 to Belokin in view of US 2002/0151804 to O'Mahoney, further in view of US 6,123,847 to Bene.

The cited prior art discloses the apparatus substantially as claimed by Applicant (see rejection above) with the exception of the weight sensor comprising a balance. Bene discloses a weighing means for an extracorporeal circuit comprising a balance 11. All of the claimed elements are known in the art, and one of ordinary skill in the art could have combined the disclosed elements by known methods, yielding only the predictable

result of a support device with movable support elements disposed below the lower end of a blood treatment machine a weight balance to control fluid flow. Accordingly, the instantly claimed invention is unpatentable over the cited prior art.

6. Claims 49 and 37-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,390,311 to Belokin in view of US 6,335,161 to Shah.

In the specification and figures, Belokin discloses the apparatus substantially as claimed by applicant. With regard to claims 49, 39, and 40, Belokin discloses a support device for liquid containers that is capable of being used with an extracorporeal blood machine, comprising a base body 12 and a support element 11/17, 12/17, wherein the support elements are slidable or rotatable around the base body, creating a horizontal displacement of part of the support elements with respect to the base body (see FIG 5, column 3, line 47 to column 5, line 13). With regard to applicant's limitations drawn to a loading position and a work position, the Belokin device is capable of being operated as claimed in that the arms 17 may be swung outward of the support for easy access while loading the bags, and rotated inward of the support in a work position for compact location near the patient.

The cited prior art suggests the apparatus substantially as claimed by Applicant (see rejection above) with the exception of an end stop, controller, and position sensor. Shah discloses a dialysis system and an apparatus and method for loading bottles of solution into the system. The apparatus includes a support element 102 that holds solution container 20. The apparatus further comprises a motor 202 with an upper and



lower limit sensor and assembly 208 that controls movement of the bottle from the loading position to the work position (see column 12, lines 1-50). While the limit sensor and position assembly do not comprise grooves as claimed by applicant, it is the position of the examiner that the Shah reference teaches that such upper and lower endrun stops are desirable in the art, and that it would have been obvious to one having ordinary skill in the art to try a reasonable number of well-known mechanical stop mechanisms to provide the end stop claimed by applicant. Accordingly, applicant's claimed structure is not a patentable improvement over the prior art.

With regard to claim 37, Applicant claims that the stop means are "normally active" for performing a particular function. Such a limitation amounts to a recitation of the intended use of the claimed apparatus. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. See MPEP § 2114. In the instant case, the combined device suggested by Belokin and Shah is capable of being operated as claimed by Applicant, meeting the limitations of the claims.

With regard to claim 38, Applicant claims an analog or digital control unit, which includes the motor assembly disclosed by Shah, meeting the limitations of the claims.

***Allowable Subject Matter***

2. Claims 23, 29, and 43-48 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
3. The following is a statement of reasons for the indication of allowable subject matter: The prior art fails to disclose or suggest the combination of features claimed by Applicant.
4. With regard to claim 23, the prior art fails to disclose or suggest the combination of the support structure claimed by Applicant in combination with a weighing sensor and a control balance and a control unit capable of operating as claimed by Applicant.
5. With regard to claim 29, the prior art fails to disclose or suggest the combination of the support structure as claimed by Applicant in combination with a measuring balance and a CPU configured to perform the claimed validation function.
6. With regard to claims 43-48, the prior art fails to disclose or suggest the combination of the support structure as claimed by Applicant in combination with horizontally slidable elongated arms.

***Response to Arguments***

7. Applicant's amendment and arguments filed 29 August 2008 have been entered and fully considered.
8. Applicant's arguments with respect to the 35 USC 103 rejections over Belokin, Shah, and Jeppsson have been considered and are persuasive. However, in light of the

amendments, a new rejection is made over various combinations of Belokin, Shah, Bene, and O'Mahony.

Applicant argues that the instantly claimed "control unit reading and validating..." comprises a positive limitation that must be given patentable weight under *Beauregard*. Applicant asserts that the above language describes a structure that is configured to perform the claimed function. However, Applicant never claims that the control unit is *configured* to perform the claimed function, only that it does. As such, the claim language does *not* recite a control unit that is actually configured to perform the claimed function.

### ***Conclusion***

A shortened statutory period for reply to this non-final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LESLIE R. DEAK whose telephone number is (571)272-4943. The examiner can normally be reached on Monday - Friday, 8:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Leslie R. Deak/  
Primary Examiner  
Art Unit 3761  
13 November 2008